CHAPTER 5

CHINA AND THE INTERNET

SECTION 1: CHINA'S DOMESTIC INTERNET CENSORSHIP ACTIVITIES

Introduction

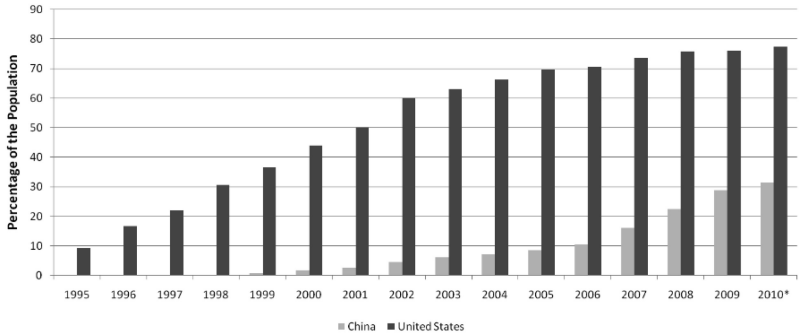
The Commission has previously noted that China employs one of the largest and most sophisticated Internet content filtering systems in the world.[1] Developments in 2010 reinforce the evidence that pervasive online censorship and restrictions on speech remain the norm in China. These censorship measures, combined with efforts to direct the nature of discussions on the Internet, play an increasingly prominent role in Chinese authorities' governing strategy. Key documents released in 2010 articulate this strategy and include other information about the Chinese government's policies and approach to the Internet. Several of China's recent Internet-related laws and regulations that affect speech and expression on the Internet provide greater detail. Moreover, the private sector in China plays a key role in Internet control and management. This section includes an illustrative case study about the Chinese search engine Baidu, an important arbiter of the information accessible to Internet users in China. After covering each of these developments in China's censorship regime, the section concludes by enumerating some of the implications for the United States.

Developments in China's Information and Communications Environment

In 2010, China continued its sustained, high-level rate of investment in information and communications technology.* China has the most Internet users in the world, reaching 420 million by mid-2010—including 364 million with broadband connections.[2] (See figure 1 for a comparison of the quantity of Internet users in China and the United States.) Cellular telephone adoption rates have increased in kind, with over 800 million subscribers by midyear, including 25.2 million users with web browsing-capable third generation service.[3]

*This textbox emphasizes China's information and communications technology developments with respect to connectivity rather than equipment. It bears mentioning, however, that China has also made substanial progress with respect to computer-related hardware used in advanced computing systems. For example, a Chinese supercomputer recently ranked as the fastest in the world, marking the first time a Chinese machine surpassed the most powerful U.S. supercomputer. See Ashlee Vance, "China Wrests Supercomputer Title from U.S. "*New York Times*, October 28, 2010. *http://www.nytimes.com/2010/10/28/technology/28compute.html*.

Figure 1: Internet Users in China and the United States, 1995–2010*



*Although China's population of Internet users is far greater than the entire population of the United States, Internet access as a percentage of the population is still substantially lower in China. Figure 1 excludes mobile devices. Numbers for 2010 are accurate through June.

Sources: International Telecommunication Union, "World Telecommunication/ICT [information and communications technology] Indicators Database" (Geneva, Switzerland: 2008). *http://www.itu.int/ITU–D/ict/*; China Internet Network Information Center, "Internet Statistics," June 30, 2010. *http://www.cnnic.cn/en/index/0O/index.htm*; State Council Information Office White Paper, "China's Internet Status" (Beijing: June 2010). *http://www.scio.gov.cn/zxbd/wz/201006/t660625.htm*; Central Intelligence Agency (CIA), *CIA World Factbook*, "China" (Langley, VA: July 2010). *https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html*.

The Internet and Governance in China

China's leadership, at all levels of the government, increasingly uses the Internet to interact with the Chinese people. This practice, interwoven with strict censorship controls, affords the government the ability to allow a controlled online debate about certain issues, especially those that do not relate to China's political situation. The government then leverages what it learns from following this debate to construct policies that aim to undercut the most serious irritants to domestic stability. Rebecca MacKinnon, then visiting fellow at Princeton University's Center for Information Technology Policy, testified to the Commission that this trend constitutes a new form of governance that she calls "networked authoritarianism." In describing this concept, she said that:

> *this new form of Internet-age authoritarianism embraces the reality that people cannot be prevented from accessing and creating a broad range of Internet content. Networked authoritarianism accepts a lot more give-and-take between government and citizens than a pre-Internet authoritarian regime. The regime uses the Internet not only to extend its control but also to enhance its legitimacy. While one party remains in control, a wide range of conversations about the country's problems rage on websites and social networking services. The government follows online chatter, and sometimes people are even able to use the Internet to call attention to social problems or injustices and even manage to have an impact on government policies.*

Ms. MacKinnon went on to explain that:

As a result, average people with Internet or mobile access have a much greater sense of freedom—and may even feel like they can influence government behavior—in ways that weren't possible under classic authoritarianism. It also makes most people a lot less likely to join a movement calling for radical political change. Meanwhile, the government exercises targeted censorship, focusing on activities that pose the greatest threat to the regime's power. It also devotes considerable resources to seeding and manipulating the nation's online discourse about domestic and international events.[4]

To these ends, the Chinese government has employed a number of tools that, at least to some extent, facilitate discourse between Chinese Internet users and the country's top leadership. In recent years, China's Congresses (the National People's Congress and the National People's Political Consultative Congress) have collected millions of comments through the Internet prior to their yearly sessions. Chinese President Hu Jintao and Premier Wen Jiabao have both communicated to China's Internet users through interactive chat sessions and message boards on websites for major, state-run news sites.[5]

One such tool surfaced in September 2010 when the Chinese Communist Party's official media outlet, the *People's Daily*, introduced a new website feature called "Direct Line to Zhongnanhai." The site, whose name references the compound that houses China's president and other important Communist Party figures, allows Internet users to post individual messages to the country's top leadership. Public relations consultant Dong Guanpeng, who has served as an advisor to the Chinese government, called the site a publicity effort.[6] Another public relations expert who has worked with the Chinese government, Scott Kronick, acknowledged the site's functional impracticality.[7] That the site received almost 40,000 messages directed to President Hu during its first day of operation indicates the high level of demand for such a service. But perhaps the most illustrative part of the site is the guidelines for permissible messages, which specify 26 broad content restrictions, including: "That which harms the state's honor or interests"; and "That which undermines state policy on religion or advocates heretical organizations or feudal superstitions." These guidelines serve as a window into the government's efforts to control the boundaries and nature of discussions online.[8]

Chinese authorities supplement these high-profile features with numerous other special sites that, though more modest in scope, also serve to engage Chinese citizens, often at the local levels. According to China's 2010 white paper on the Internet (see below), since the nation launched an initiative called the Government Online Project in the mid-1990s, Chinese authorities have created more than 45,000 government portals. These portals include sites for "[75] central and state organs, 32 provincial governments, and 333 prefectural governments and over 80 [percent of] county-level governments." Although the portals generally aim to provide citizens with services, a high-ranking official at China's State Council Information Office (otherwise known as the Office of Foreign Propaganda)[9] recently acknowledged in a speech about the Internet

that "[g]overnment agencies at all levels and in all regions have gradually built mechanisms to guide public opinion through integrating the functions of propaganda departments and actual work departments."* In other words, according to this model, citizens who access a local government website to find out about government projects should also be exposed to the party's latest propaganda themes.

Selective Censorship in Practice

In testimony to the Commission, Congressman Chris Smith recounted to the Commission specific examples of this censorship in practice from a visit to China with Congressman Frank Wolf prior to the 2008 Beijing Olympic Games. At that time, Representative Smith discovered that his own website, along with Representative Wolf's, was inaccessible from the Chinese mainland. Representative Smith noted that Chinese censors also blocked the site for Radio Free Asia and all materials related to the Dalai Lama.[10]

The congressman cited an example of how China's censorship and propaganda efforts are finely tuned to shield the Chinese Communist Party from criticism. Specifically, Representative Smith conducted an online search for materials by Manfred Nowak, United Nations (UN) Special Rapporteur on Torture. Mr. Nowak's report about the treatment of detainees at Guantanamo Bay was available to Chinese Internet users; a separate report that found widespread torture within China, however, was not.[11]

Commenting on the selective nature of China's Internet censorship practices, Ms. MacKinnon testified that "[i]t's not that [China's] government is controlling everything. But they're controlling [access to information] enough that they're preventing any serious challenge to the Communist Party's authority."[12]

Developments in China's Internet Policy

In 2010, the world gained two important windows into the Chinese government's views about the Internet. First, the Chinese government detailed its policies on a range of Internet-related issues through an official white paper. The paper appears to be designed primarily to signal policy positions and preferences to foreign audiences. Second, two versions (an original version and a censored version) of a speech about the Internet in China by a key Chinese Communist Party propaganda official appeared online. A comparison of these two documents yields insight into the Chinese government's actual views on Internet-related topics, including the areas the government deems most sensitive.

*This speech is discussed in the following subsection, "Developments in Internet Policy." For the speech itself, see Wang Chen, "Concerning the Development of Our Country's Internet" (speech before the Standing Committee of the National People's Congress, Beijing, April 29, 2010). *http://www.hrichina.org/public/contents/article?revision__id=175119&item__id=175084*.

Internet White Paper

In June 2010, China's State Council Information Office released a white paper entitled *The Internet in China* that details many of China's numerous laws and regulations. Analysis of the white paper offers insight into the Chinese government's general views on a range of Internet-related issues.[13] The document fully articulates and explains the government's "basic policy regarding the Internet," summarized as "active use, scientific development, law-based administration and ensured security." According to the text, it aims to provide "an overall picture" about "the true situation of the Internet in China."[14] Specifically, the paper touts the Chinese government's efforts to "spur the development" of the Internet, promote its use, and guarantee citizens' freedom of speech on the medium. It also intends to explain China's Internet administration practices, security initiatives, and efforts to facilitate Internet-related international exchange programs. Several of these themes bear closer examination.

The paper suggests twin imperatives in China's approach to the Internet: swift development and active control. Ms. MacKinnon testified to the Commission that the paper explains that "the rapid, nationwide expansion of Internet and mobile penetration is a strategic priority" for China. This is in part due to the recognition that "[t]he development of a vibrant indigenous Internet and telecommunications sector is critical for China's long-term global economic competitiveness," said Ms. MacKinnon. At the same time, those involved with the Internet in China "are fully expected to support and reinforce domestic political stability and to ensure that the Internet and communications technologies . . . will not be used in a manner that threatens Communist Party rule."[15]

One of the white paper's defining features is the repeated assertion about the Chinese government's commitment to Internet freedoms. Citing constitutional protections, the paper states plainly that "Chinese citizens fully enjoy freedom of speech on the Internet."[16] Although the paper offers no immediate qualifiers, it later states that China's:

> *laws and regulations clearly prohibit the spread of information that contains contents subverting state power, undermining national unity, infringing upon national honor and interest, inciting ethnic hatred and secession, advocating heresy, pornography, violence, terror, and other information that infringes upon the legitimate interests of others.*[17] *

Finally, the paper reveals China's discomfort with perceived U.S. dominance in Internet administration organizations. One organiza-

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*At other times, the paper notes additional restrictions, such as "no organization or individual may produce, duplicate, announce or disseminate information having the following contents: being against the cardinal principles set forth in the Constitution; endangering state security, divulging state secrets, subverting state power and jeopardizing national unification; damaging state honor and interests; instigating ethnic hatred or discrimination and jeopardizing ethnic unity; jeopardizing state religious policy, propagating heretical or superstitious ideas; spreading rumors, disrupting social order and stability; disseminating obscenity, pornography, gambling, violence, brutality and terror or abetting crime; humiliating or slandering others, trespassing on the lawful rights and interests of others; and other contents forbidden by laws and administrative regulations." Information Office of the State Council, "Section V," *The Internet in China* (Beijing: June 8, 2010). *http://english.gov.cn/2010–06/08/content__1622956__7.htm*.

tion in particular is the Internet Corporation of Assigned Names and Numbers (ICANN),* which provides regulations and standards for the Internet. The Chinese government advocates for a greater role for international institutions in Internet governance. Specifically, the paper states that "China supports the establishment of an authoritative and just international Internet administration organization under the UN system through democratic procedures on a worldwide scale." Moreover:

> *China maintains that all countries have equal rights in participating in the administration of the fundamental international resources of the Internet, and a multilateral and transparent allocation system should be established on the basis of the current management mode, so as to allocate those resources in a rational way and to promote the balanced development of the global Internet industry.*[18] †

The Internet and Propaganda

On April 29, 2010, the State Council Information Office's Wang Chen, reportedly "the highest government official responsible for managing online information in China" and "the Party's top official in charge of external propaganda work," delivered a detailed speech about the Internet to the Standing Committee of the National People's Congress.[19] ‡ On May 4, the text of the speech, which contained apparently sensitive views, was posted on the State Council Information Office's website. The text was quickly removed and replaced the following day with an altered version. However, alert readers were able to preserve a version of the original and later made it available to the public.§ A comparison of these documents sheds light on the Chinese Communist Party's internal views on

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*The Internet Corporation of Assigned Names and Numbers is a nonprofit, public benefit, private-public partnership created in 1998 through a memorandum of understanding with the U.S. Department of Commerce. For more information, see icann.org, "ICANN Factsheet," undated. *http://www.icann.org/en/factsheets/fact-sheet.html*.

†This statement echoes concerns surfaced by Chinese officials in other forums. A January 2010 article in China's official English-language newspaper, the *China Daily*, provides a more pointed description about Beijing's concerns: "The control of the Internet plays a strategic role for US. Using the internet, the US can intercept information via the net, export US values and opinions, support a 'Color Revolution,' feed the opposition powers and rebels against anti-US governments, interfere with other countries' internal affairs and make proactive attacks on enemy's communication and directing networks [sic]." The Chinese government almost certainly timed the release of this article to coincide with a speech about Internet freedom delivered the same day by U.S. Secretary of State Hillary Clinton. *China Daily*, "Comment: Internet—New shot in the arm for US hegemony," January 22, 2010. *http://www.chinadaily.com.cn/china/2010–01/22/content__9364327.htm*.

‡Mr. Wang is a member of the Central Committee of the Chinese Communist Party. According to the speech text, Mr. Wang is also simultaneously deputy director, Propaganda Department; Chinese Communist Party director, External Propaganda Department; and Chinese Communist Party director, State Council Information Office. Lending credence to the assertion that Mr. Wang is perhaps the top official in China with respect to the Internet, Mr. Wang appeared to take a leading role in managing the controversy that followed from Google's claims in early 2010 about having been targeted by Chinese hackers. See, for example, Chris Buckley, "China official's comments on Internet control," Reuters, January 14, 2010. *http://in.reuters.com/article/idUSTRE60D0OJ20100114*.

§For more detailed information about this incident, see Human Rights in China, "How the Chinese Authorities View the Internet: Three Narratives," undated. *http://www.hrichina.org/public/contents/article?revision__id=175069&item__id=175068*. For the full text of the speech, including redactions and insertions, see Wang Chen, "Concerning the Development of Our Country's Internet" (speech before the Standing Committee of the National People's Congress, Beijing, April 29, 2010). *http://www.hrichina.org/public/contents/article?revision__id=175119&item__id=175084*.

the Internet as it relates to China. Several key themes from the redacted portion of the text bear mentioning.

First, according to Mr. Wang, the Internet presents a new front to advance "propaganda and ideological work" as well as to "guide public opinion" domestically and abroad. The Chinese Communist Party, in attempts to influence public views, has used the Internet to control news and discussions about critical events like recent unrest in Tibet and Xinjiang, and the Sichuan earthquake. For influencing opinions outside China, the speech addresses the Internet as a way to "disseminate information to the outside world" through the nation's "44 news and commercial websites with foreign language channels." Mr. Wang cited these channels as an "important force in countering the hegemony of Western media and bolstering [China's] cultural soft power."[20] Mr. Wang later advocates for the use of these news sites to "initiate targeted international public opinion battles, and create an international public opinion environment that is objective, beneficial, and friendly to [China]."*[21] Strict censorship of information related to the Nobel Peace Prize awarded to prominent Chinese dissident Liu Xiaobo, combined with select official Chinese news media statements aimed at discrediting the prize, serve as a recent example of China's information controls in practice.[22]

Second, China's management of the Internet is multilayered and complex. This means that multiple stakeholders within the Chinese government bureaucracy approach the Internet from different angles. Namely:

> *departments within the Ministry of Industry and Information Technology take responsibility for industrial development and professional management, departments within the Ministry of Public Security take responsibility for security supervision and fighting crimes,† and the external propaganda departments take the lead in information content management, with the participation of other departments, such as those of culture; radio, film, and television; press and publication; education; public health; and industry and commerce.* [23]

Mr. Wang also notes the importance of the National People's Congress, the audience for his speech, in creating laws that promote good government guidance.[24] The various stakeholders increasingly work well together, according to Mr. Wang, but improvements must be made.[25]

Third, Mr. Wang cites the need for China to decrease or eliminate anonymity on the Internet. At several points, he mentions the need to create a "real name" system to achieve this end. Under this construct, Internet users would need to provide their full names, and possibly other personally identifiable information, in order to

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*For more on China's efforts to expand news content to foreign markets, see John Pomfret, "From China's mouth to Texans' ears: Outreach includes small station in Galveston," *Washington Post*, April 25, 2010. *http://www.washingtonpost.com/wp-dyn/content/article/2010/04/24/AR2010042402492.html*; and Isaac Stone Fish and Tony Dokoupil, "All the Propaganda That's Fit to Print," *Newsweek*, September 3, 2010. *http://www.newsweek.com/2010/09/03/is-china-s-xinhua-the-future-of-journalism.html*.

†The word "crimes" here should be understood to represent the rather expansive view of crime under Chinese law.

access or utilize Internet services. Specifically, Mr. Wang states that China:

> *will make the Internet real name system a reality as soon as possible, implement a nationwide cell phone real name system, and gradually apply the real name registration system to online interactive processes.*[26]

Mr. Wang also highlights several related initiatives that are already underway, including "real name" usage requirements for certain forum moderators, systems to remove anonymous comments from news stories, and an "identity authentication" system for online bulletin boards.[27]

Fourth, new Internet-related technologies present challenges and opportunities for China. For example, in a part of the speech that was not redacted, Mr. Wang explains that "[t]he Internet is gradually becoming more deeply and broadly entrenched in the national economy." He notes that this will positively impact China's economic development model. However, he cautions that as technologies increasingly move toward multimedia like video, "supervision" will be more difficult.[28] In this vein, Mr. Wang highlights the positive and negative aspects of new trends like mobile Internet, the "Internet of Things,"* and "cloud computing."† With respect to the latter, in a redacted portion of the text, Mr. Wang cites what he calls a popular saying in the Internet industry: "Whoever seizes that cloud will control the future." Also redacted is a list of firms, including IBM, Google, and Yahoo!, that Mr. Wang credits with having conducted extensive research in the field of cloud computing.[29]

Fifth, the speech reveals a nuanced view of the outside world's effects on the Internet in China. On the one hand, Mr. Wang reveals a wariness of what he refers to as "overseas hostile forces" that would seek to infiltrate harmful information into China's Internet space. He advocates for strengthening mechanisms to block the dissemination in China of such Internet content.[30] On the other hand, Mr. Wang acknowledges the need to "consult useful Internet management experience from overseas and integrate it into the actual development and management of [China's] Internet."[31] In short, Mr. Wang's view appears to be that foreign Internet content is undesirable, but foreign Internet management expertise is useful.

Developments in China's Internet Laws and Regulations

The Chinese government maintains a complex Internet regulatory regime that authorities continued to adjust in 2010. At least 14 Chinese government entities have some form of regulatory, over-

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*The "Internet of Things" is a concept where many or most devices, including things like kitchen appliances that we do not typically associate with the Internet, will be a node on a network and thus accessible and controllable from the Internet. For a frank assessment of the concept, see *Economist*, "The Difference Engine: Chattering Objects," August 13, 2010. *http://www.economist.com/blogs/babbage/2010/08/internet_things*.

†"Cloud computing" is a concept that envisions most or all data eventually being stored remotely at large data centers rather than on personal devices. Although there are certain vulnerabilities associated with this architecture, it provides a number of convenient features, such as the ability to access data from multiple devices. For more information, see *Economist*, "Battle of the Clouds," October 17, 2009. *www.economist.com/node/14644393*.

sight, or enforcement role responsible for the Internet in China.* China's lawmakers also directly issue laws that affect the Internet. Together, China has over 60 Internet-related regulations and laws, as of 2003, the last year for which a comprehensive count was available.[32] Many of these laws and regulations are vague and include "catch-all" provisions. As a result, a complete sense of permissible conduct on the Internet in China remains difficult to discern. Although a full account of these laws and regulations is beyond the scope of this section, several of the most notable developments from the past year are detailed below.

Registration of Chinese Domains

In late 2009, Chinese authorities announced an overhaul in the requirements for Internet domain name registration. The China Internet Network Information Center, the entity that manages Chinese domains, said that potential registrants would need to submit a business license in order to register a Chinese domain. This regulation precipitated a simultaneous effort by China's Internet service providers to "review their client base for potentially fraudulent or 'harmful' individually owned sites."[33] The *Financial Times* noted that the term "harmful," in this context, serves as a "catch-all that covers everything from pornography to anti-state activity."[34] By early 2010, China's Internet service providers had shut down approximately 130,000 sites that did not have government documentation. Additional regulations issued in February required any individual seeking to register a domain name to apply in person and submit, among other things, a personal photograph.[35] These actions coincided with a broader push from Chinese authorities to control Internet content, which ultimately resulted in the blockage of independent domestic and foreign video and content-sharing websites such as BTChina.net and YouTube.com, respectively.[36]

These new regulations drew different responses from outside observers. To avoid compliance with these strict rules, American domain retailer GoDaddy.com opted to halt sales on the Chinese domain.[37] Some commentators have opined that the new regulations will only serve to impose even more severe limitations on free speech in China.[38] However, some computer security analysts have noted that the new effort may reduce the prevalence of malware on Chinese Internet hosts and thereby improve Internet hygiene.[39]

The Internet and State Secrets

On April 29, 2010, China's National People's Congress amended the country's 1988 State Secrets Law that placed new restrictions

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*These entities include, but are not limited to, the Ministry of Industry and Information Technology; the Ministry of Culture; the Ministry of Public Security (as well as provincial and local Public Security Bureau counterparts); the State Administration of Industry and Commerce; the General Administration for Press and Publication; the State Administration for Radio, Film and Television; the State Council Information Office; the State Administration of Foreign Exchange; the Ministry of State Security; the National Administration for the Protection of State Secrets; the Ministry of Education; and the China Internet Network Information Center. See Anne-Marie Brady, *Marketing Dictatorship* (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2008), pp. 128–9; Michael Wines, Sharon Lafraniere, and Jonathan Ansfield, "China's Censors Tackle and Trip Over the Internet," *New York Times*, April 7, 2010. *http://www.nytimes.com/2010/04/08/world/asia/08censor.html*; and Sohu.com Inc., "United States Securities and Exchange Commission Form 10–K," p. 12. *http://www.sec.gov/Archives/edgar/data/1104188/000119312510042570/d10k.htm#toc10433_3*.

and obligations on China's Internet and other network operators. According to testimony the Commission received from Mitchell Silk, partner at law firm Allen & Overy LLP, the amendment:

> *places an affirmative obligation on Internet and other public network information operators and service providers to cooperate with public and national security authorities in the investigation of cases involving the disclosure of state secrets.*[40]

This amendment receives fuller treatment in chapter 6, section 1, "State Secrets and Corporate Disclosures."

Regulations and Politics

Google and Beijing had a well-publicized standoff starting in January 2010, following revelations of a large-scale, sophisticated computer exploitation targeting the firm's networks in China. Investigations revealed that the perpetrators behind this incident, apparently based in China, sought both the firm's proprietary information and access to the e-mail accounts used by Chinese human rights activists. (For fuller treatment of this incident, see chap. 5, sec. 2, of this Report, "External Implications of China's Internet-Related Activities."). These findings led Google to announce that it would revisit its practices of complying with Chinese Internet censorship regulations, possibly ending the company's ability to operate its web search services in the country. As a result of the conflict, in subsequent months, industry analysts raised concerns about whether China would permit Google to continue to operate in the country other services with less political implications (including advertising and music functions), if the firm declined to comply with these regulations.

China's Ministry of Industry and Information Technology must certify websites and other Internet-related firms with an Internet Content Provider license. Google's license required renewal by mid-2010.[41] Following Google's implementation of a system that automatically redirected Chinese users from Google's theretofore censored Chinese site ("google.cn") to Google's uncensored Hong Kong-based site ("google.com.hk"), Chinese authorities signaled that they might not grant the renewal.* This forced Google to devise a system whereby users had to manually redirect themselves from the Chinese site to the Hong Kong-based site in order to conduct searches. This measure apparently satisfied Chinese authorities, who later approved Google's license renewal application.[42]

Some analysts speculated that Google's reliance on its Hong Kong-based site to serve users in mainland China would further weaken the site's position relative to competing firms, most notably Baidu.[43]

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*An underreported dimension of this solution (as well as the compromise solution discussed below) is that users in mainland China seeking to access the "uncensored" Hong Kong site would not get the uncensored content available to users in Hong Kong. "Offensive" search results would still be censored by China's national-level Internet filtering system. The key change here would be that the onus for censorship would fall on Chinese authorities rather than Google itself.

Case Study: Baidu

The Chinese government's rigorous censorship demands affect all private companies that operate in China. Ms. MacKinnon described how China's censorship regime, which she characterized as an analogue to the legal concept of "intermediary liability," essentially holds that "[a]ll Internet companies operating within Chinese jurisdiction, domestic or foreign, are held liable for everything appearing on their search engines, blogging platforms, and social networking services" as well as "everything their users discuss or organize through chat clients and messaging services." This functionally creates conditions where the Chinese government outsources Internet censorship to the private sector.[44] Even with this added burden, some search firms in China have earned massive profits.

Baidu.com, long China's most popular search engine, is subject to this censorship and plays a critical role as an arbiter of content available to China's Internet users. Founded in 1999, the company emulated Google's advertising-driven business model,[45] "unabashedly borrowed [its] design,"[46] and steadily grew to become the most popular site in China. Baidu's popularity continued to increase by offering some innovative services, leveraging the popularity of pirated files,[47] and creating Chinese replicas of popular and established web services, such as Wikipedia.[48] This case study examines Baidu's increasing market share, its status as one of China's leading censors and its overall relations with the state, and the role that American financiers played in the firm's rise and continue to play in the firm's operations.

Popularity

Baidu is the most visited website in China and the sixth most-visited website on the Internet, according to Alexa, a web traffic analysis firm.[49] A market analytics firm estimated that, in the first quarter of 2010, Baidu conducted 64 percent of all web searches in China.[50] By June 2010, a Baidu executive claimed that his company had a "76 percent share of China's PC [personal computer] search market."[51] This substantial traffic increase reflects what *BusinessWeek* called Baidu's "near-monopoly status in China's Chinese-language search category" in the wake of Google's partial withdrawal from the Chinese search market in 2010.[52] According to testimony from Rebecca Fannin, author and columnist, Google's lower profile within China "puts Baidu on a more powerful footing."[53] Ms. MacKinnon testified that given the site's market position, "Baidu is expected [to] lead the industry in cooperating with the government's political objectives."[54]

Censorship and the State

From its founding, Baidu has aggressively censored results from its web searches.[55] According to recent reports, the company "employs teams of people who block and take down controversial" Internet content, including from its encyclopedia and blogging services.[56] The site has a reputation as being "the most proactive and restrictive online censor in the search arena."[57] With respect to blogs specifically, an analysis by Ms. MacKinnon demonstrated that Baidu is among the most aggressive censors of web content in China.[58] Representative Chris Smith testified to the Commission

that "Baidu is now very much a part" of China's "comprehensive oppression" on the Internet.[59]

In April 2009, an anonymous Baidu employee leaked on the Internet the firm's most recent censorship guidelines, including prohibited search terms and web addresses. Blocked content included various message board services and terms like "AIDS," "use of force to suppress," "migrant workers," "opposition," and the names of jailed Chinese dissidents.[60] The Chinese government has commended Baidu and other Internet firms for their compliance with censorship rules and encouraged their leadership to send political messages. Ms. MacKinnon testified that:

> *Baidu [Chief Executive Officer] Robin Li, and nineteen other Chinese Internet company executives received the government's 'China Internet Self-Discipline Award' for fostering 'harmonious and healthy Internet development' In the Chinese regulatory context, 'healthy' is a euphemism for 'porn-free' and 'crime-free'; 'Harmonious' implies prevention of activity that would provoke social or political disharmony. In other words, the 'Self-Discipline Award' is China's annual censorship award for companies.*[61]

Some indicators suggest that Baidu censors begrudgingly. China's censorship model dictates that the private sector, to include Baidu, must bear the cost of the censorship of materials hosted on (or displayed by) their site. This requires the development of special automated tools and large teams of human censors.[62] In an unusual blog post dealing with censorship requirements, Sun Yunfeng, Baidu's chief product designer, wrote that "every enterprise or every individual must dance with shackles. . . . This is the reality. Do as much as you can is the real attitude to have as a business or a person." The post was soon removed.[63] In August, Baidu's chief executive, Mr. Li, appeared to underscore this view when he reportedly said, "[i]t is not an advantage for Baidu because we have to block things. . . . It does not give us better user experience."[64]

Background and Financing

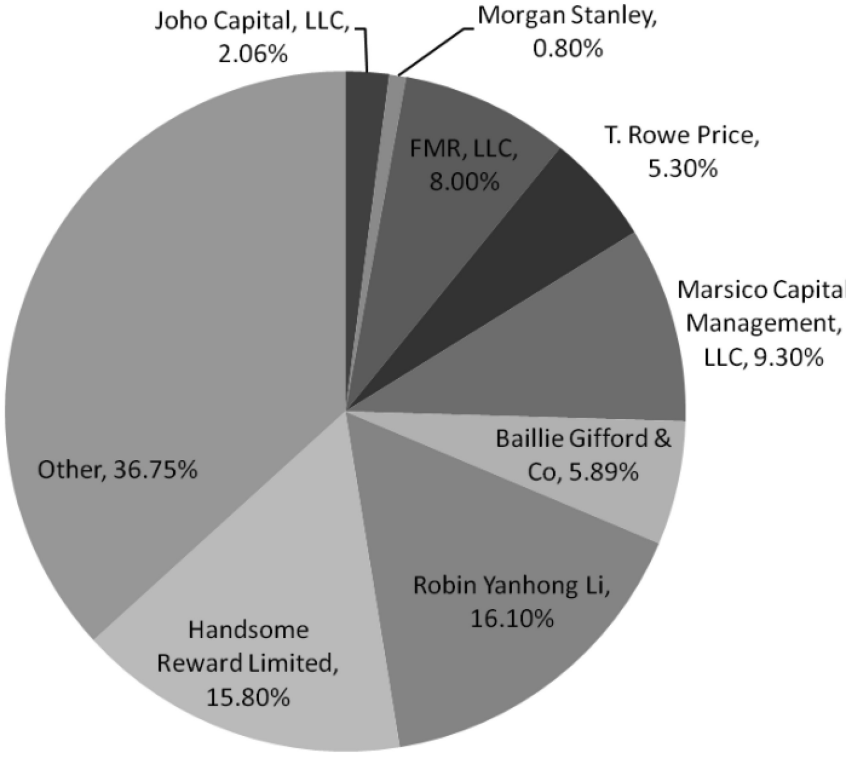
Baidu's initial investors were Americans and American firms. Among them were venture capital firms Draper Fisher Jurvetson, Integrity Partners, DFJ ePlanet Investors, IDG Ventures China, Sequoia Capital China, and Peninsula Capital.[65] In 2004, Gregory Penner, head of Peninsula Capital Fund I, LLC, part of Peninsula Capital, became a Baidu director, a position he retains today.[66] Since 2005, another American, William Decker, has also been a member of the board.[67] In addition to venture capital, Baidu secured a $5 million investment from its American competitor, Google, which later sold its shares in June 2006 for $60 million, a 1,100 percent return.[68] According to Ms. Fannin:

> *Baidu was molded the typical way of most Chinese startups during these early days of China's entrepreneurial awakening with the rise of the Internet era. It was set up as a wholly owned foreign offshore holding company. Most of these . . . were based in the Cayman Islands or the Virgin Islands. This structure is a way for venture investors to put*

capital (usually U.S. dollars) into a Chinese company. It also provides an avenue for getting investment returns from the Chinese company as shares [are] sold, typically through an initial public offering in New York, London, or Hong Kong.[69]

In 2010, Providence Equity Partners invested $50 million into Baidu's online video venture.[70] According to *Legal Week*, "Baidu's biggest [equity] holders are still largely American."[71] This is demonstrated by the firm's official filings, which list numerous large institutional investors. (See figure 2.)

Figure 2: Ownership of Baidu, 2010*



*Handsome Reward Limited is owned by Robin Yanhong Li. Figure represents ownership proportion of shares listed on U.S. exchanges.

Sources: Baidu Inc., "U.S. Securities and Exchange Commission File No: 005–81049–10609520," p. 2. *http://www.sec.gov/Archives/edgar/data/1106500/000117266110000213/bidu123109a1.txt*; Baidu Inc., "U.S. Securities and Exchange Commission File No: 005–81049–10948362," p. 2. *http://www.sec.gov/Archives/edgar/data/895421/000089542110000570/baidu5.txt*; Baidu Inc., "U.S. Securities and Exchange Commission File No: 005–81049–10604452," p. 2. *http://www. sec.gov/Archives/edgar/data/315066/000031506610001454/filing.txt*; Baidu Inc., "U.S. Securities and Exchange Commission File No: 005–81049–10592329," p. 2. *http://www.sec.gov/Archives/edgar/data/80255/000008025510000047/bidu13gdec09.txt*; Baidu Inc., "U.S. Securities and Exchange Commission File No: 005–81049–10589018," p. 2. *http://www.sec.gov/Archives/edgar/data/1055966/000119312510027386/dsc13g.htm*; Baidu Inc., "U.S. Securities and Exchange Commission File No: 005–81049–10579827," p. 2. *http://www.sec.gov/Archives/edgar/data/1088875/000108887510000001/baiducom12312009.txt*; and Baidu Inc., "U.S. Securities and Exchange Commission File No: 005–81049–10578805," p. 2. *http://www.sec.gov/Archives/edgar/data/1329099/000095012310009650/c95797sc13gza.htm*; Baidu Inc., "U.S. Securities and Exchange Commission File No: 005–81049–10578805," p. 3. *http://www.sec.gov/Archives/edgar/data/1329099/000095012310009650/c95797sc13gza.htm*.

Commenting on the role of U.S. capital in Baidu, Ms. MacKinnon testified that:

> *the Chinese government has transferred much of the cost of censorship to the private sector. The American investment community has so far been willing to fund Chinese innovation in censorship technologies and systems without complaint or objection. Under such circumstances, Chinese industry leaders have little incentive and less encouragement to resist government demands that often contradict even China's own laws and constitution.*[72]

Implications for the United States

In a 2010 speech on Internet freedom, Secretary of State Hillary Clinton made the case that Internet conditions abroad are important for the United States. Specifically, she observed that "[o]n their own, new technologies do not take sides in the struggle for freedom and progress, but the United States does." She noted that, because of the Internet's tremendous potential to improve people's lives, "it's critical that its users are assured certain basic freedoms. Freedom of expression is first among them." She concluded that:

> *pursuing the freedoms I've talked about today is, I believe, the right thing to do. But I also believe it's the smart thing to do. By advancing this agenda, we align our principles, our economic goals, and our strategic priorities.*[73]

Secretary Clinton highlighted another relevant issue with broad implications for peace and security. She noted that "[h]istorically, asymmetrical access to information is one of the leading causes of interstate conflict." Elaborating on this observation, Secretary Clinton stated that "[w]hen we face serious disputes or dangerous incidents, it's critical that people on both sides of the problem have access to the same set of facts and opinions."[74] This point perhaps has special relevance for U.S.-China relations. It is unclear that the Chinese people would be afforded access to U.S. perspectives in the event of an incident between the two countries, such as the 2001 collision of a Chinese fighter jet with an American naval reconnaissance aircraft. The absence of such access adds a destabilizing dimension to the bilateral relationship.

It is also becoming increasingly apparent that censorship has implications for trade between nations. A Google official in 2010 pointed out that free trade principles should clearly apply to the Internet. Many U.S. firms deal strictly with information; any hindrance to their operations abroad should be treated as seriously as obstructions to taking traditional exports to market. The official observed that if a foreign country placed broad restrictions on "physical trade, we'd all be saying this violates trade agreements. If you want to be part of the community of free trade, you have to let the Internet be open."[75]

Finally, while many Americans praised Google for its decision to discontinue censorship of its search results in China, other Americans have continued to subsidize and profit from censorship practices in China.

Conclusions

- Chinese authorities have managed skillfully to balance their perceived need to limit speech on the Internet with the Chinese public's need to feel a part of an ongoing and participatory discourse about the country's social conditions. The Chinese government has used all available means to bind the content and scope of this conversation. At the same time, the government has been selectively responsive and has attempted to remediate some of the nation's most serious irritants in order for the Chinese Communist Party to maintain power. This confluence of conditions might be termed "network authoritarianism."
- China's leadership views information and communications technologies as presenting opportunities for economic development and enabling the distribution of propaganda at home and abroad in support of Chinese Communist Party interests. Conversely, the Chinese government views these technologies as a threat to regime stability and the Party's ability to control the flow of information and freedom of expression.
- Beijing continues to institutionalize and promote strict Internet governance through numerous laws and regulations as well as strict oversight and enforcement from government organizations. Chinese authorities also influence and guide the nature and tone of discussions online.
- The Chinese government outsources much of its censorship activities to the private sector. The popular search engine Baidu serves as a useful case study of this dynamic. The firm, established in part with the help of U.S. capital, plays a key role in China's censorship regime. With Google's smaller presence in China, Baidu and its American investors stand to reap greater profits.
- China's Internet censorship activities have broad implications for the United States. Impeded information flows are destabilizing, particularly in the context of a crisis. Moreover, censorship in some respects is actually a barrier to trade, thereby undermining U.S. businesses' ability to operate in China.